

their knowledge in that this aspect of control of the attached property by the State Government and the matter of the novation of the agreement of November 29, 1972, as a result of negotiations for a settlement were suppressed, and that had these matters been disclosed the court would not have made the order of attachment. I could find no suppression or misrepresentation as alleged for, as I have stated, the connotation of the word "control" advanced by the defendant was misconceived as the condition of title I have referred to requiring the approval of the Menteri Besar for the sale, charge or lease of the attached property did not result in the attached property coming under the control of the State Government, and there was also no novation, as I have already said, since the plaintiff accepted payment of the sum of \$10,000 with the express reservation that this was without prejudice to their right to institute proceedings for the recovery of the whole amount claimed by them.

For these reasons I dismissed the defendant's application to set aside the order of attachment before judgment with costs and certified that I required no further argument under the provisions of Order 54 rule 22A of the Rules of the High Court, 1957.

Defendant's application dismissed.

Solicitors: *Cheang Lee & Ong; Yook Woon & Yeow.*

RE DATUK JAMES WONG KIM MIN

[O.C.J. (Seah J.) April 19, 1975]

[Kuching — Originating Motion No. K.1 of 1975]

Habeas Corpus — Person detained under Preservation of Public Security Ordinance, Sarawak, 1962 — Ordinance had no extra-territorial effect — Ordinance declared to be a Federal Law — Effect of — Whether operation of law extended throughout Malaysia — Whether Federal Secretary had power to order a person to be detained in Peninsular Malaysia — Prerogative Remedies Ordinance (Cap. 47) — Preservation of Public Security Ordinance, 1962, s. 4 — Malaysia Act, 1963, ss. 73(3) and 74 — Federal Constitution, art. 159A.

Constitutional Law — Malaysia Act 1963 — Federal Constitution, art. 159A.

Constitutional Law — Colonial legislation declared federal law — Whether operation of law extended throughout Malaysia.

This was an application for a writ of *habeas corpus*. The applicant had been detained under an order issued by the Federal Secretary, Sarawak. The order of detention purported to be made under the Preservation of Public Security Ordinance, 1962 but directed the detention of the applicant in Taiping Prison, Perak. The Preservation of Public Security Ordinance, 1962, originally a Sarawak Ordinance had been declared to be a Federal Law by the Modification of Laws (Declaration of Federal Present Laws) (Sarawak) Order, 1965.

Held: (1) when the Preservation of Public Security Ordinance was enacted in 1962 its operation was limited as it was intended to limit its operation to the Colony of Sarawak only. The Ordinance had no extra-territorial effect;

(2) the legal effect of declaring the Preservation of Public Security Ordinance to be a federal law was to transfer the responsibility of administering the federal law to the Federal authority and to vest in the Federal Parliament the power to amend or to repeal the said law;

(3) the Modification of Laws (Declaration of Federal Present Laws) (Sarawak) Order, 1965 did not extend the operation of the Preservation of Public Security Ordinance

throughout Malaysia and therefore the Ordinance and the Regulations made thereunder applied only to the State of Sarawak and have no legal force outside the State of Sarawak;

(4) as the court was not satisfied that the detention of the applicant in Peninsular Malaysia was lawful, a writ of *habeas corpus* would be issued for the production and the release of the applicant.

Cases referred to:-

- (1) *Re Keenan & Anor.* [1971] 3 All E.R. 883.
- (2) *Secretary of State of Home Affairs v. O'Brien* [1923] A.C. 603; [1923] All E.R. Rep. 442.
- (3) *Re Mwenya* [1959] 3 All E.R. 525.
- (4) *Assa Singh v. Menteri Besar, Johore* [1969] 2 M.L.J. 30.
- (5) *Reg. v. Burah* (1873) 3 App. Cas. 889.
- (6) *Hodge v. The Queen* (1883-84) 9 App. Cas. 117.
- (7) *Macleod v. Attorney-General for New South Wales* [1891] A.C. 455.
- (8) *Adegbenro v. Akintola* [1963] A.C. 614.
- (9) *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 M.L.J. 129.
- (10) *Greene v. Secretary of State for Home Affairs* [1942] A.C. 284.
- (11) *Liversidge v. Sir John Anderson & Anor.* [1942] A.C. 206.

ORIGINATING MOTION.

Datuk David Marshall (J.C. Fong with him) for the applicant.

Abdullah bin Ngah, Senior Federal Counsel, (Ahmad Fairuz bin Datuk S. A. Halim, Senior Federal Counsel, with him) for the respondents.

Seah J.: At the conclusion of the hearing on March 7, 1975, I delivered a brief oral judgment holding that I was not satisfied that the detention of Datuk James Wong Kim Min at Kamunting Detention Centre, Taiping, Perak, Peninsular Malaysia, was lawful and I ordered that a writ of *Habeas Corpus Ad Subjiciendum* be issued in order that the said Datuk James Wong Kim Min be produced before the court on Monday, March 10, 1975 at 2.15 p.m. to be released. The said Datuk James Wong Kim Min was duly produced before the court at the appointed date and time and he was formally released by the court.

When I delivered the oral judgment I indicated that I would give my reasons in writing at a later date. This I now proceed to do.

This is an *ex parte* application for a writ of *Habeas Corpus Ad Subjiciendum* by the applicant, Datuk James Wong Kim Min under section 3 of the Prerogative Remedies Ordinance (Cap. 47). When the application first came up for hearing on February 10, 1975 I adjourned the application so that notice might be given to (a) Officer-in-Charge of Kamunting Detention Centre, Taiping, Perak, Peninsular Malaysia and (b) the Federal Secretary or Setiausaha Persekutuan of Sarawak. Pursuant to Rule 5 of the *Habeas Corpus* (Procedure) Rules I ordered that notice of the application should also be served on the Minister of Home Affairs or Menteri Hal Ehwal Dalam Negeri at Kuala Lumpur, Peninsular Malaysia. I also ordered that the formal hearing of the *ex parte* application be fixed for Monday, March 3, 1975 at 9 a.m.

At the formal hearing, Datuk David Marshall assisted by Mr. J. C. Fong appeared for the applicant;

Encik Abdullah bin Ngah, Senior Federal Counsel assisted by Encik Ahmad Fairuz bin Datuk S. A. Halim, Senior Federal Counsel represented all the three respondents.

Before the commencement of the formal hearing of the application, Senior Federal Counsel Encik Abdullah Ngah raised a preliminary point as to the jurisdiction of the court to entertain and/or to issue a writ of *Habeas Corpus Ad Subjiciendum* when the applicant, viz. the person detained, was being held in a place which was outside the purview of the High Court in Borneo. The Senior Federal Counsel relied on *Re Keenan & Anor.*⁽¹⁾ and section 25(1) of the Courts of Judicature Act 1964.

For the applicant Datuk Marshall cited the House of Lords case of the *Secretary of State for Home Affairs v. O'Brien*⁽²⁾ and section 25(2) of the Courts of Judicature Act 1964.

In *Re Mwenya*⁽³⁾ at page 543 Lord Parker C.J. had this to say about the *O'Brien* case:

"Reliance was further placed by the applicant on *Barnardo v. Ford*, *Gossage's case* [1892] A.C. 326 and *R. v. Secretary of State for Home Affairs, Ex parte O'Brien* [1923] 2 K.B. 361, and sub nom. *H.L. Secretary of State for Home Affairs v. O'Brien* [1923] A.C. 603. Both those cases are authority for the proposition that the writ (of *habeas corpus*) will issue not only to the actual goaler but to a person who has power or control over the body. Further, in *O'Brien's case*, the writ was issued to the Secretary of State for Home Affairs, who had in fact handed the physical custody of the body over to the Government of the Irish Free State. It is clear, however, from the facts of that case, that the Secretary of State had not only been responsible for the original detention but that there were strong grounds for thinking that in handing over the body to the Government of the Irish Free State he had not lost all control over it. In those circumstances the court decided to issue the writ in order that the full facts could be investigated and argument heard on the return."

The facts in *Keenan's* case appear to be as follows:

"One, Sean Keenan has his home address at 8 New Street, Londonderry; and the other, James McElduff's home address is Merchantstown, Omagh, in the country of Tyrone. Both the applicants were arrested in Northern Ireland by British soldiers under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and subsequently arrested by the police under the 1956 Regulations. Although both the applicants were detained in Northern Ireland applications were made on their behalf in the English High Court for writs of *habeas corpus*. The Court of Appeal dismissed both applications holding that *inter alia* since 1782 English courts have had no jurisdiction to issue writ of *habeas corpus* in respect of persons arrested and detained in Ireland. In Northern Ireland such jurisdiction is only exercisable by the courts of Northern Ireland."

It is plain that the facts in *Keenan's* case are quite different from the present case and that the *ratio decidendi* enunciated therein has no application here. However, after hearing the argument and considering the authorities, I overruled the preliminary objection of the Senior Federal Counsel holding that the Federal Secretary, Sarawak has power to control over the body of the applicant notwithstanding that the applicant is being detained at Kamunting Detention Centre, Taiping, Perak, Peninsular Malaysia which is outside the jurisdiction of the High Court in Borneo.

In opening the case for the applicant Datuk Marshall submitted that the application for a writ of *habeas corpus* should be allowed on the following grounds, namely:

- A 1) That the Detention Order was issued by a person who had no authority to do so at the time when the said Order was signed under the Preservation of Public Security (Detention) Regulations (hereinafter referred to as PPSR);
- 2) Assuming that the Federal Secretary, Sarawak had the authority to issue such a Detention Order, the PPSR being an exclusively Sarawak law, could only authorise him to detain a person who was in Sarawak at the time when the said Order was made;
- B 3) If the Federal Secretary, Sarawak had authority the Detention Order was issued out of time, namely more than twenty-eight days following the arrest of the applicant on October 30, 1974 at Kuching, Sarawak;
- 4) That the Preservation of Public Security (Detention) (Amendment) Regulations 1975 which appeared in the Sarawak Government Gazette Part II on February 27, 1975 was *ultra vires* the Preservation of Public Security Ordinance 1962 (hereinafter referred to as PPSO);
- C 5) That both the PPSO and all regulations made thereunder were *ultra vires* the provisions of Article 5(2) and Article 162 of the Federal Constitution (see *Assa Singh v. Mentri Besar, Johore*⁽⁴⁾);
- 6) That the grounds for detention supplied were so vague that it was impossible for the applicant to exercise effectively the right to make representation to the Advisory Committee under Regulation 3 of the Preservation of Public Security (Detention Orders) Rules;
- D 7) That the Federal Secretary, Sarawak had exceeded the authority conferred on him by the PPSR when he signed the Detention Order;
- 8) That there was no factual basis for making the Detention Order;
- 9) That there is no evidence before the court that the office of the Federal Secretary, Sarawak exist and such evidence as there is suggest that there is no such office and no such office has been established and no such officer has been validly appointed; and
- E 10) That Engku Ibrahim bin Ngah is a *de facto* and not a *de jure* Federal Secretary, Sarawak.

In order to understand these submissions I will try to trace the history of the Preservation of Public Security Ordinance 1962 or PPSO.

The PPSO is a pre-Malaysia Ordinance enacted by the Legislature of Sarawak on May 18, 1962. At that time, Sarawak was still a colony of Britain. It is common knowledge that Sarawak became a Crown Colony in 1946 when it was ceded to Britain by the Third Rajah of Sarawak.

Section 4 of the PPSO reads:

- "4(1) If at any time the Governor is satisfied that the situation in Sarawak is so grave that the exercise of the powers conferred by section 3 of this Ordinance is inadequate to ensure the preservation of public security he may, by notification in the *Gazette* declare that the provisions of subsection 2 of this section shall come into operation, and thereupon those provisions shall come into operation accordingly; and they shall continue in operation until the Governor by a further notification directs that they shall cease to have effect, whereupon they shall cease to have effect except as respects things previously done.
- (2) The Governor may, for the preservation of public security, make regulations to provide, so far as appears to him to be strictly required by the exigencies of the situation in Sarawak, for—
- I (a) the detention of persons; and
- (b) requiring persons to do work and render services."

On December 8, 1962 the Governor declared in Part II of the Sarawak Government *Gazette* that the provisions of subsection 2 of section 4 of the PPSO should come into operations (see notification No. S220). In exercise of the powers conferred upon the Governor by section 4 of the PPSO, the Preservation

of Public Security (Detention) Regulations (PPSR) as well as the Preservation of Public Security (Detention Orders) Rules were made on the same day. Both the PPSO and PPSR together with the Preservation of Public Security (Detention Orders) Rules remained in force in the colony of Sarawak and had not been annulled when Sarawak joined the Federation of Malaysia on Malaysia Day, viz. September 16, 1963.

In L.N. No. 214/63 of the Federal Government *Gazette* it was expressly declared that the Malaysia Act was to come into force on September 16, 1963.

In exercise of the powers conferred by section 74 of the Malaysia Act 1963 the Yang Dipertuan Agung made the Modification of Laws (Internal Security and Public Order) (Borneo States) Order 1963 on September 14, 1963. Regulation 1 of the said Order provides that it shall apply to the States of Sabah and Sarawak on and after Malaysia Day. Regulation 3(1) enacts that the present laws of Sabah and Sarawak specified in the Second Schedule to this Order (hereinafter called "the continuing laws") shall continue to have effect in Sabah and in Sarawak respectively with the modifications set out in subsection (2) of this section and with any further modifications set out in the Second Schedule under the titles of the continuing laws. The PPSO and the PPSR are included in the Second Schedule to this said Order (See L.N. 232/63 of the Federal Government *Gazette*).

On October 8, 1963 in exercise of the powers conferred by section 4 of the PPSO of Sarawak and by virtue of the Modification of Laws (Internal Security and Public Order) (Borneo States) Order 1963 the Minister of Internal Security made an amendment to the PPSR by adding a new regulation 8 which reads:

"8. The local federal authority may, subject to any general or special directions of the Minister, exercise and perform all the functions of the Minister under these regulations and any rules made thereunder except the appointment of the Chairman and members of an Advisory Committee under paragraph (2) of regulation 2 and the appointment of some other person as local federal authority under paragraph (2)

(2) In this regulation —

'functions' includes any power conferred or duty imposed upon the Minister by these regulations;

'local federal authority' means the Federal Secretary in Sarawak and such other person or persons in Sarawak as the Minister may by notification in the Sarawak Government *Gazette* appoint to be the local federal authority for the purposes of these regulations."

(See No. S(F) 211 of Part II of the Sarawak Government *Gazette* 1963).

On August 11, 1971 the definition of "local federal authority" contained in paragraph (2) of Regulation 8 had been deleted and replaced by a new definition to be inserted after Regulation 1 of PPSR by the Minister of Home Affairs. The new definition which shall be deemed to have come into force on November 1, 1970 reads as follows:

"'local federal authority' means the Secretary General, Ministry of Sarawak Affairs, and such other person or persons in Sarawak as the Minister may by notification in the Sarawak Government *Gazette* appoint to be the local federal authority for any of the purposes of these regulations".

(See Sarawak L.N.(F) 100 of Part II of the Sarawak Government *Gazette* 1971).

On February 27, 1975 the definition of "local federal authority" was further amended by substituting "Federal Secretary, Sarawak" for "Secretary General, Ministry of Sarawak Affairs" by the Minister of Home Affairs under Preservation of Public Security (Detention) (Amendment) Regulations 1975 which shall be deemed to have come into force on September 5, 1974 (see Sarawak L.N.(F) 7 of Part II of the Sarawak Government *Gazette*).

Now I will recapitulate the salient facts of the case leading to the filing of the *ex parte* application for a writ of *Habeas Corpus Ad Subjiciendum* by the applicant.

The applicant is a Malaysian citizen by operation of law having been born and resided in Sarawak since his birth. He also claims to be an elected member of Council Negri, Sarawak and has a residential address at No. 42, Middle Road, Kuching, Sarawak.

On October 30, 1974 the applicant alleges that he was arrested by several police officers from Kuala Lumpur, Peninsular Malaysia at his home. He was informed by the police that he was arrested pursuant to Regulation 7(1) of the PPSR. Following the arrest the applicant was escorted to Peninsular Malaysia and detained in Kuala Lumpur. On December 28, 1974 a Detention Order, signed by the Federal Secretary, Sarawak pursuant to Regulation 2 of the PPSR accompanied by an unsigned copy of a statement, were served on him in Kuala Lumpur, Peninsular Malaysia. On January 3, 1975 the Federal Secretary, Sarawak signed a Removal Order under paragraph (5) of Regulation 2 of the PPSR directing the removal of the applicant from Taiping Prison, Perak to Kamunting Detention Camp, Perak, Peninsular Malaysia.

On February 4, 1975 the applicant through his advocates, Messrs. Reddi & Co., Kuching, Sarawak took out an *ex parte* notice of motion praying for a writ of *Habeas Corpus Ad Subjiciendum* be issued and thereafter an Order be made that he should be released forthwith.

Now on May 25, 1965 the PPSO including all subsidiary legislation made or deemed to have been made thereunder are declared to be federal law by Modification of Laws (Declaration of Federal Present Laws) (Sarawak) Order 1965 which shall be deemed to have come into force on Malaysia Day. This said Order was made by the Yang Dipertuan Agung with the concurrence of the Governor of Sarawak in the exercise of the powers conferred by section 74 of the Malaysia Act 1963 (see L.N. 200 of the Federal Government *Gazette*).

What is the legal effect of declaring the present laws of Sarawak viz. PPSO including all subsidiary legislations to be federal law? It is however, implicit that internal security including preventive detention; restriction of residence; etc., are included in the Federal legislative list in List I — Federal List, Item 3(c) of the Ninth Schedule of the Federal Constitution.

For the respondents it was submitted by the Senior Federal Counsel Encik Abdullah Ngah that when the PPSO and its subsidiary legislations were declared to be federal law under section 74(3A) of the Malaysia

Act 1963 the matters were taken out of the control of the State Government of Sarawak and placed in the hands of the Federal Parliament. It was further contended that since the legislative/executive/administrative authority was now vested in the Federal Government, viz. the Yang Dipertuan Agung and the Federal Minister of Home Affairs, it could be inferred that the area of operation of this Ordinance and its subsidiary legislations is now Pan-Malaysia. In other words, the PPSO including its subsidiary legislations apply to the whole of Malaysia by virtue of their being declared to be federal law. It was argued that as Sarawak is now one of the component states of Malaysia the question of extra-territorial limit between the Borneo States of Sabah and Sarawak and Peninsular Malaysia does not arise.

Datuk Marshall, on behalf of the applicant, had contended that when the PPSO and its subsidiary legislations were declared federal law the powers of amendments and/or repeal are now vested in the Federal Parliament. It was further submitted that this declaration did not have the effect of extending the operations of the laws throughout Malaysia. Learned counsel argued that the PPSO and its subsidiary legislations are exclusively Sarawak law and are limited in their operation to the territory of Sarawak only notwithstanding that the PPSO and its subsidiary legislations are now declared federal law.

Before considering these submissions I would like to touch briefly on the powers of the colonial legislature. In *Reg. v. Burah*⁵⁾ a question arose as to the powers of the Indian Legislature. In delivering the judgment of the Privy Council, Lord Selborne L.C. said at page 904:

"The Indian legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself."

The same doctrine has been laid down in a later case of *Hodge v. The Queen*.⁶⁾ It is plain that a colonial legislature is not a delegate of the Imperial Parliament. It is restricted in the area of its powers, but within that area it is unrestricted.

However, Dominion and colonial statutes in another important respect differ from British statutes in that they can have no extra-territorial effect even as to British subjects unless the power of extra-territorial legislation or extra-territorial constraint has been expressly or impliedly conceded by a British Act or by Order in Council, charter or proclamation (see *Craies* on Statute Law (7th Edition) at page 499).

In *Macleod v. Attorney-General for New South Wales*⁷⁾ a New South Wales Act made bigamy punishable in the colony "whosoever the second marriage takes place". One Macleod was indicted and convicted in New South Wales for bigamy, his first marriage having taken place in New South Wales and the second in Missouri. On appeal to the Privy Council the statute was explained as applying only to bigamy committed in New South Wales. Lord

A Halsbury L.C. in delivering the judgment said at page 457:

"Therefore, if their Lordships construe the statute as it stands, and upon the bare words, any person, married to any other person, who marries a second time anywhere in the habitable globe, is amenable to the criminal jurisdiction of New South Wales, if he can be caught in that colony. That seems to their Lordships to be an impossible construction of the statute; the colony can have no such jurisdiction, and their Lordships do not desire to attribute to the colonial legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a colony, and, indeed, inconsistent with the most familiar principles of international law."

At page 458 the judgment continued:

C "Their Lordships think it right to add that they are of opinion that if the wider construction had been applied to the statute, and it was supposed that it was intended thereby to comprehend cases so wide as those insisted on at the bar, it would have been beyond the jurisdiction of the colony to enact such a law. Their jurisdiction is confined within their own territories, and the maxim which has been more than once quoted, '*Extra territorium jus dicenti impune non paretur*' would be applicable to such a case."

D I have examined the Sarawak Cession Order in Council 1946 and other relevant Instruments including the Sarawak (Constitution) Order in Council 1956. I find nothing in them which empowered the Council Negri to legislate for things, persons or events beyond its territorial jurisdiction except "to make law for the peace, order and good government of Sarawak" (see E Article 32(1) of the Sarawak (Constitution) Order in Council 1956).

It follows therefore when the PPSO was enacted in 1962 its operation was limited as it was intended to limit its operation to the colony of Sarawak only. In my opinion, the Ordinance had no extra-territorial force.

F At this stage I will say a few words about the Malaysia Act 1963. Article 159A of the Federal Constitution reads:

G "159A. The provisions of Part IV of the Malaysia Act (which contains temporary and transitional provisions in connection with the operation of that Act) shall have effect as if embodied in this Constitution, and shall have effect notwithstanding anything in this Constitution, and in particular Clause 1 of Article 4 and Articles 159, 161E and 161H (as from 19/9/1966 Articles 159 and 161H were substituted for Articles 159, 161E and 161H by Act 59/1966), shall have effect in relation thereto accordingly."

Subsection (3) of section 73 of the Malaysia Act 1963 provides:

H "(3) Subject to the following provisions of this Part, the present laws of the Borneo States and of Singapore shall, on and after Malaysia Day, be treated as federal laws in so far as they are laws which could not be passed after Malaysia Day by the State Legislature, and otherwise as State Laws."

And subsection (3) of section 74 enacts as follows:

I "(3) An order under subsection (1) shall not, without the concurrence of the Governor (Substitute 'Ruler or Governor, as the case may be' for 'Governor' by Act 31/1965 of 22/6/1965) make as respects any State any provision which in an Act of Parliament could not be made or could not come into force without the agreement (however expressed) of a State authority, nor extend to the State any law relating to matters about which the Legislature of the State has power to make laws, nor declare any present law of the State to be federal law (the words 'nor declare, any present law of the State to be federal law' was omitted by Act 31/1965 of 22/6/1965), nor modify any State law."

However, by the same Act 31/1965 there was inserted after subsection (3) a new subsection —

“(3A). In addition to the powers conferred by subsections (1) and (2); the Yang Dipertuan Agung may, with the concurrence of the Ruler or Governor of each State in Malaysia in which the law has effect, by order declare any present law to be a federal law, whether that law relates —

- (a) wholly to a matter in the Federal List; or
- (b) partly to a matter in the Federal List and
 - (i) partly to a matter in the State List or the Concurrent List; or
 - (ii) partly to a matter in the State List and partly to a matter in the Concurrent List;

and any order so made shall, unless or until it is amended or repealed, be conclusive evidence that any law declared by it to be a federal law is a federal law.”

Since the Modification of Laws (Declaration of Federal Present Laws) (Sarawak) Order 1965 was made on March 23, 1965 it seems to me that the said Order was made under the then subsection (3) and not under the new subsection (3A) of section 74 of the Malaysia Act 1963.

On March 23, 1965 in exercise of the powers conferred by section 74 of the Malaysia Act 1963, the Yang Dipertuan Agung with the concurrence of the Governor of Sarawak made the Modification of Laws (Declaration of Federal Present Laws) (Sarawak) Order 1965 which declared one hundred and eight present laws of the State of Sarawak including all subsidiary legislations made or deemed to have been made thereunder to be federal laws. The PPSO is one of the present laws which was declared to be a federal law.

Regulation 1 provides that “This Order ... shall be deemed to have come into force on Malaysia Day.” (see L.N. 200/65 of the Federal Government Gazette).

The explanatory note annexed to the said Order reads as follows:

“The object of this Order is to declare as federal laws those laws of Sarawak which were in force on Malaysia Day and which the Federal and Sarawak government have agreed should be treated as relating to matters which on that Day were on the Federal List. This Order is not intended to cover all Sarawak laws on matters on the Federal List, e.g. it omits all ‘applied legislation’ and most legislation which deals with matters on the State and/or Concurrent List as well as on the Federal List.”

In compliance with section 74(9) of the Malaysia Act 1963 this said Order was laid before each House of Parliament and for the purpose of this case, I will assume that Parliament did not resolve that the said Order or any provisions in the said Order was to be annulled.

Having dealt with the preliminary matters, I will now consider the submissions of the learned counsel regarding the legal effect of declaring the PPSO and its subsidiary legislations to be federal law under section 74 of the Malaysia Act 1963.

In my opinion the answer to this problem would depend upon the construction of the Malaysia Act 1963 and the relevant provisions of the Federal Constitution.

In the case of *Adegbenro v. Akintola*⁽⁸⁾ Lord Radcliffe said at page 632:

“That instrument (*viz.* the Constitution of Western Nigeria) now stands in its own right; and, while it may well be useful

on occasions to draw on British practice or doctrine in interpreting a doubtful phrase whose origin can be traced or to study decisions on the Constitutions of Australia or the United States where federal issues are involved, it is in the end the wording of the Constitution itself that is to be interpreted and applied, and this wording can never be overridden by the extraneous principles of other Constitutions which are not explicitly incorporated in the formulae that have been chosen as the frame of this Constitution.”

Now the PPSO was a “present law” of the State of Sarawak within the meaning of section 73(5) of the Malaysia Act 1963. Because the PPSO and the PPSR deal with internal security including prevention detention, restriction of residence, etc., they are laws which could not be passed after Malaysia Day by the Council Negri or State Legislature (see section 73(3) of the Malaysia Act). Before Malaysia Day the PPSO and the PPSR had no extra-territorial force in as much as the former colonial legislature of Sarawak had no power to make law having extra-territorial operation. However, by Regulation 3(1) of the Modification of Laws (Internal Security and Public Order) (Borneo States) Order 1963 the PPSO shall continue to have effect in Sarawak respectively with the modifications set out in subsection (2) of this section and with any further modifications set out in the Second Schedule under the titles of the continuing laws. Although the PPSO shall be treated as federal law in the State of Sarawak insofar as it is law which could not be passed after Malaysia Day by Council Negri, nevertheless Regulation 5(4) of the Modification of Laws (Internal Security and Public Order) (Borneo States) Order 1963 expressly provides that —

“the Interpretation Ordinance of Sarawak shall have effect in Sarawak for the interpretation of the laws of Sarawak set out in the Second Schedule to this Order.”

and the PPSO was one of the Ordinances included in this Schedule. When the PPSO and its subsidiary legislations are declared federal law by the Modification of Laws (Declaration of Federal Present Laws) (Sarawak) Order 1965 it is pertinent to note that the said Order does not extend or purport to extend the operation of this federal law throughout the Federation of Malaysia as in the case of the Restricted Residence (Extended Application) Ordinance 1948 (see page 42 of the judgment of Gill F.J. (as he then was) in *Assa Singh v. Mentri Besar, Johore*⁽⁴⁾).

Applying the canons of construction laid down in *Akintola's* case, *supra*, in my judgment, having regard to the provisions contained in the Federal Constitution, I hold that by declaring the PPSO including its subsidiary legislations to be federal law under section 74(3) of the Malaysia Act 1963, the legal effect would be to transfer the responsibility of administering the federal law to the Federal authority and to vest in the Federal Parliament the power to amend and/or repeal the said law. I further hold that since the Modification of Laws (Declaration of Federal Present Laws) (Sarawak) Order 1965 did not extend (expressly or by necessary implication) the operation of this federal law throughout Malaysia, the PPSO and the PPSR is a federal law applying only to the State of Sarawak. It follows therefore that the PPSO including its subsidiary legislations have no legal force outside the State of Sarawak, albeit Sarawak is one of the component States of Malaysia.

As regards the burden of proof, Suffian F.J. (as he then was) in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia*⁽⁹⁾ said at page 152:

"In my judgment, the onus of proving the legality of the detention is on the Minister in the first instance. This he can discharge simply by producing the order of detention which, if its authenticity and good faith are not impugned, is a sufficient answer. If the detainee alleges *mala fides*, as he does here, then the onus shifts to him and it is for him to prove *mala fides*. For this proposition there are two Houses of Lords' decision."

The learned judge then referred to *Greene v. Secretary of State for Home Affairs*⁽¹⁰⁾ at page 297 and *Liversidge v. Sir John Anderson & Anor.*⁽¹¹⁾ at page 216.

In this case, the Federal Secretary, Sarawak purported to make a Detention Order on December 28, 1974, in the following terms: —

"THE PRESERVATION OF PUBLIC SECURITY
(DETENTION) REGULATIONS, 1962

DETENTION ORDER

WHEREAS it appears to me to be expedient for securing the public safety:

NOW, THEREFORE, in exercise of the powers conferred under Regulation 2 of the Preservation of Public Security (Detention) Regulations, 1962 and all other powers thereunto me enabling, I,

ENGKU IBRAHIM BIN NGAH (Name)
Setiausaha Persekutuan, Sarawak (Designation)
hereby order that

DATUK JAMES WONG KIM MIN (Name)
— TF 5771
of 42 Middle Road, Kuching, Sarawak (Address)
be detained for a period of 24 (Twenty-four) (Months)
in Taiping Prison, Perak, West Malaysia (Place of Detention)

28 DEC 74 (Date)
Sgd: ENGKU IBRAHIM BIN NGAH
Setiausaha Persekutuan,
SARAWAK.

SEAL of Setiausaha Persekutuan, SARAWAK.

NOTE

Any person in respect of whom an Order has been made shall be informed of his right under rule 3 of the Preservation of Public Security (Detention Orders) Rules, 1962 to make objections against the order for his detention to the Advisory Committee appointed by the Minister to consider and to make recommendations in respect of such objections.

Original to: Supt. of Taiping
Prison, Perak,
WEST MALAYSIA.

Duplicate to: Federal Secretary, SARAWAK.
Triplicate to: DETAINEE.
Quadruplicate to: Head of Special Branch.
Quintuplicate to: File of the Officer making the Order."

On the next page the following appear:

"This is to certify that, I, the undersigned have been served with the Detention Order dated and also informed of the contents therein and of my right under rule 3 of the Preservation of Public Security (Detention Orders) Rules 1962 to make objection to the Advisory Committee appointed by the Minister to consider and to make recommendations in respect of such objections.

Signed by.....
In the presence of Illegible.
Served and explained by Illegible
in the English dialect of this
28 Dec., 74
day of....."

The undermentioned writings appear immediately beneath:

A "This order was served to Datuk James Wong Kim Min at Balai Polis, Jalan Pekeliling at about 1200 hrs. on December 28, 1974. Datuk James Wong cannot sign the Order but accepting the Order with protest as he claims that he is innocent of the charges of the allegations.

Sgd: ASP Abang Mustapha."

On January 3, 1975 the Federal Secretary, Sarawak made a purported Removal Order which reads:

B "THE PRESERVATION OF PUBLIC SECURITY
ORDINANCE, 1962
THE PRESERVATION OF PUBLIC SECURITY
(DETENTION) REGULATIONS, 1962
REMOVAL ORDER

C In exercise of the powers conferred by paragraph 5 of Regulation 2 of the Preservation of Public Security (Detention) Regulations 1962 and all other powers thereunto me enabling, I hereby direct the removal of

DATUK JAMES WONG KIM MIN (DTF 5771)

being a person in respect of whom an Order of Detention under those Regulations has been made, from Taiping Prison, Perak to Kamunting Detention Camp, Perak, with effect from the 3rd day of January 1975.

D Dated this 3rd day of January 1975.
Sgd: ENGKU IBRAHIM BIN NGAH
Setiausaha Persekutuan,
SARAWAK.

SEAL of Setiausaha Persekutuan, SARAWAK."

E It is plain that the purported Detention Order dated December 28, 1974 was addressed to the Superintendent of Prison at Taiping, Perak, Peninsular Malaysia to detain the applicant for a period of twenty-four months. The applicant was removed from Taiping Prison to Kamunting Detention Centre at Taiping, Perak, Peninsular Malaysia on or about January 3, 1975. At the time when the purported Detention Order was made by the Federal Secretary, Sarawak the applicant was not in the State of Sarawak but was detained in a place in Kuala Lumpur, Peninsular Malaysia. Since the PPSO and the PPSR have no extra-territorial force outside Sarawak I am constrained to hold that the Federal Secretary, Sarawak and the other respondents herein have failed to satisfy the court as to the validity of the said Order of Detention. As I was not satisfied that the detention of the applicant at Kamunting Detention Centre, Taiping, Perak, Peninsular Malaysia was lawful, I made an order directing the issue of a writ of *Habeas Corpus Ad Subjiciendum* to be served on 1) the Minister of Home Affairs; 2) Federal Secretary, Sarawak; and 3) the Officer-in-Charge of Kamunting Detention Centre, Taiping, Perak, Peninsular Malaysia in order that the said Datuk James Wong Kim Min be produced before the High Court in Borneo at Kuching on Monday, March 10, 1975 at 2.15 p.m. to be released.

In view of my conclusion I do not find it necessary to deal with the other matters raised in these proceedings by the learned counsel.

I Having regard to the provisions of the Prerogative Remedies Ordinance (Cap. 47) I made no order as to costs of the proceedings.

Order accordingly.

Solicitors: Reddi & Co.